



04-O-0165

ORDINANCE

BY: COUNCILMEMBER CEASAR C. MITCHELL

AS SUBSTITUTED BY THE PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

**AN ORDINANCE TO AMEND ARTICLE XXIV OF THE CITY OF ATLANTA CODE OF ORDINANCES, RELATING TO VENDING ON PRIVATE PROPERTY; TO DEFINE CERTAIN TERMS; TO PLACE PERMITTING AND OTHER AFFIRMATIVE REQUIREMENTS ON THE PROMOTERS, OPERATORS, AND OWNERS OF FLEA MARKETS AND FLEA MARKET VENDORS FOR THE PURPOSE OF ELIMINATING THE SALE OF UNAUTHORIZED SOUND AND AUDIO-VISUAL RECORDINGS AT FLEA MARKETS; TO PROVIDE FOR THE FILING AND INVESTIGATION OF COMPLAINTS ALLEGING VIOLATIONS OF THIS ARTICLE; TO REPEAL CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES.**

WHEREAS, the City of Atlanta is recognized as a national and international center for the recording industry, and is home to numerous recording artists, recording studios, record labels, and others engaged in the legitimate production, distribution, and sale of sound and audio-visual recordings; and

WHEREAS, the illegal and unauthorized reproduction, distribution, and sale of sound and audio-visual recordings threatens to undermine the economic health of legitimate businesses within the City of Atlanta, as well as the livelihood of those residents and citizens of the City of Atlanta who work in such legitimate businesses and elsewhere in the recording industry; and

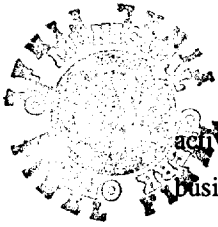
WHEREAS, flea markets within the City of Atlanta have been identified by law enforcement agencies and the recording industry as locations where the distribution and sale of unauthorized sound and audio-visual recordings is particularly prevalent; and

WHEREAS, the City of Atlanta has determined that it is in the best interests of the health, safety, and welfare of its citizens and residents to place reasonable regulations on the operation of flea markets in the City of Atlanta for the purpose of eliminating the distribution and sale of unauthorized sound and audio-visual recordings at such locations,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, AS FOLLOWS:

**Section 1.** Section 30-1461 of the Code of Ordinances of the City of Atlanta is hereby amended by adding the following definitions:

*"Flea market* means any event at which two or more persons offer merchandise for sale or exchange; and at which a fee is charged for the privilege of offering or displaying merchandise for sale or exchange; or at which a fee is charged to prospective buyers for admission to the area where merchandise is offered or displayed for sale or exchange; or regardless of the number of persons offering or displaying merchandise or the absence of fees, at which merchandise is offered or displayed for sale or exchange if the event is held more than six times in any twelve month period. The term "flea market" applies regardless of whether such sale of merchandise is conducted out of doors or within a building. The primary characteristic is that these



activities involve a series of sales sufficient in number, scope, and character to constitute a regular course of business.

The term "flea market" shall not mean and shall not apply to any event which is organized for the exclusive benefit of any community chest, fund, foundation, association, or corporation organized and operated for religious, educational, or charitable purposes, provided that no part of any admission fee or parking fee charged vendors or prospective purchasers or the gross receipts or net earnings from the sale or exchange of merchandise, whether in the form of a percentage of the receipts or earnings, as salary, or otherwise, inures to the benefit of any private shareholder or person participating in the organization or conduct of the event; or any event at which all persons selling, exchanging, or offering or displaying merchandise for sale or exchange are manufacturers or licensed retail or wholesale merchants. Flea markets shall not include developed and operating shopping centers, antique stores, jewelry stores, coin shops, salvage operations, clothing stores, or special sales events as accessory uses not to exceed 14 days, or other businesses of merchandise in common with flea markets where the vendor therein is not operating among a collection of vendors or renting or securing individual space within an overall operation.

*Flea market promoter, operator, or owner* means any person, firm, corporation, partnership, or other form of business entity which owns, operates, maintains, manages, or promotes flea markets.

*Flea market vendor* means any person, individual, firm, corporation, partnership, or other form of business entity of any type or character who engages in the retail sale of merchandise at a flea market. "Flea market vendor" shall not include licensed second-hand goods dealers or pawnbrokers. In addition to being subject to any regulations pertaining specifically to flea market vendors that may be included in this article, flea market vendors shall be subject to all regulations within this article pertaining generally to vendors.

*Recording* means a tangible medium on which sounds, images, or both are recorded or otherwise stored, including an original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now existing or developed later on which sounds, images, or both are or can be recorded or otherwise stored, or a copy or reproduction that duplicates in whole or in part the original. An *illicit recording* is a recording produced without the authorization of the recording's owner, or which is otherwise sold or offered for sale in violation of any state or federal law pertaining thereto."

**Section 2.** Section 30-1463 of the Code of Ordinances of the City of Atlanta shall be amended by deleting paragraph (a) in its entirety and inserting in its place the following:

"(a) Every vendor, including flea market vendors, shall maintain a permanent record book in which shall be entered in ink and in legible English at the time any property is acquired for the purpose of retail sale: the



(e) Nothing in this section shall prohibit the suspension or revocation of any permit by the police department's license and permit section, the license review board, or the mayor in accordance with the provisions of Division 2 of this article."

**Section 4.** Section 30-1481 of the Code of Ordinances of the City of Atlanta shall be amended by deleting paragraph (d) in its entirety and inserting in its place a new paragraph (d), and by adding a new paragraph (e) to such section, to read as follows:

"(d) All permits issued to vendors, including flea market vendors or assistant vendors, or registered agents are nontransferable, and must be displayed in clear view, together with the vending permit photo identification card, at the permitted location at all times when the vendor or assistant vendor is present.

(e) All permits issued to vendors, including flea market vendors, shall contain a general description of the merchandise, food, services, or any combination thereof to be offered for sale by such vendor at the permitted location, and shall indicate if the permit authorizes the sale of recordings."

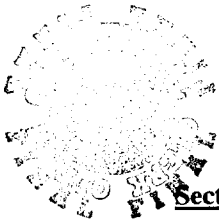
**Section 5.** Section 30-1482 of the Code of Ordinances of the City of Atlanta shall be amended by adding a new paragraph (e) to such section, to read as follows:

"(e) Flea market vending permit. In addition to any other permits that must be obtained pursuant to paragraphs (a), (b), (c), or (d) of this section for the items or services sold, a flea market vending permit shall authorize the sale of items or services by a flea market vendor. Such a permit must be obtained by a flea market vendor as well as by any flea market promoter, operator, or owner. Flea market vending permits obtained by the flea market promoter, operator, or owner shall authorize the operation of the flea market. Such flea market vending permits shall be administered in the same manner as other permits required under this article, and the holders of such permits shall be subject to all applicable requirements of this article as a condition to holding such permits."

**Section 6.** Section 30-1483 of the Code of Ordinances of the City of Atlanta shall be amended by deleting subparagraph (d)(1)f. in its entirety and inserting in its place a new subparagraph (d)(1)f., and by adding a new subparagraph (d)(1)k. to such section, to read as follows:

" f. Name and current address of each proposed assistant vendor.

k. A general description of the food, merchandise, or services to be sold or offered for sale at the proposed vending location, including whether recordings will be sold or offered for sale."



**Section 7.** Section 30-1485 of the Code of Ordinances of the City of Atlanta shall be amended by deleting paragraph (b) in its entirety and inserting in its place a new paragraph (b), by deleting subparagraph (d)(6) in its entirety and inserting in its place a new subparagraph (d)(6), and by adding a new subparagraph (d)(9) to such section, to read as follows:

“ (b) No applicant shall be issued more than one permit; provided that an applicant for a flea market vending permit may be issued a flea market vending permit in addition to any other permit.”

(d) . . .

(6) Names and current addresses of proposed assistant vendors.

(9) A general description of the food, merchandise, services, or combination thereof to be sold or offered for sale at the proposed vending location, including whether the permit authorizes the sale or offering for sale of recordings.”

**Section 8.** Section 30-1486 of the Code of Ordinances of the City of Atlanta shall be amended by deleting paragraph (a) in its entirety and inserting in its place the following:

“(a) Initial permit fees are due and payable by certified funds after approval of the initial vending application. Initial permit fees for vending shall be as follows:

Merchandise permit	\$ 75.00
Food permit	75.00
Combination permit	125.00
Service permit	25.00
Assistant vendors	15.00
Flea market vending permit	50.00

In no event shall a vending permit be issued prior to payment of the above fees.”

**Section 9.** Section 30-1487 of the Code of Ordinances of the City of Atlanta is hereby amended by deleting such section in its entirety and inserting in its place the following:

“Permits are to be used only for the location specified in the vendor’s application and such location shall be clearly written on the permit. The vendor or an assistant vendor to whom the permit is issued shall be present at the location specified on the permit at all such times as merchandise, food, services, or any combination thereof are sold or offered for sale at such location.”



**Section 10.** Paragraph (c) of Section 30-1489 of the Code of Ordinances of the City of Atlanta is amended by inserting a new subparagraph (8) to such paragraph, to read as follows:

“(8) Failure to abide by the duties imposed on the permit holder pursuant to section 30-1491.”

**Section 11.** Section 30-1489 of the Code of Ordinances of the City of Atlanta is amended by inserting a new paragraph (e) to such paragraph, to read as follows:

“(e) In addition to carrying out all other investigations as may be permitted under this article, the police department’s license and permit section shall investigate any alleged violation of this article upon receipt of a written, sworn complaint by any person who witnesses or becomes aware of a potential violation. Such complaint shall be signed under penalty of perjury, and shall be accompanied by any supporting evidence. After receiving a properly filed complaint, the police department’s license and permit section shall conduct its investigation and, based on the results of such investigation, may suspend or revoke any permit issued pursuant to this article to the person who is the subject of such complaint by providing notice as required by section 30-1490(b). A copy of such notice also shall be provided to the person who filed the complaint.”

**Section 12.** Section 30-1491 of the Code of Ordinances of the City of Atlanta is amended by adding new paragraphs (7), (8), and (9) to such section, to read as follows:

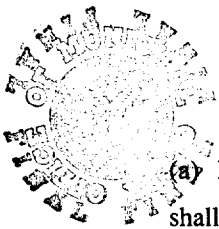
“(7) No vendor or flea market vendor shall sell or offer for sale any illicit recordings.

(8) No flea market promoter, operator, or owner shall permit any flea market vendor operating on the premises controlled by such flea market promoter, operator, or owner to sell or offer for sale any illicit recordings.

(9) No flea market promoter, operator, or owner shall permit any flea market vendor operating on the premises controlled by such flea market promoter, operator, or owner to sell or offer for sale any services, merchandise, or combination thereof unless the vendor’s vending permit photo identification card, and that of all assistant vendors, are displayed as required by section 30-1481(d).”

**Section 13.** The Code of Ordinances of the City of Atlanta shall be amended by adding a new Section 30-1492, to read as follows:

**“Section 30-1492. Duties of flea market promoter, operator, or owner.**



(a) Every flea market promoter, operator, or owner authorized to operate a flea market under this article shall, on a regular basis, inspect or cause to be inspected the merchandise sold or offered for sale by flea market vendors who are operating on the premises of the flea market promoter, operator, or owner. Such inspections shall also verify that each vendor's vending permit photo identification card, and that of any assistant vendors, are displayed as required by section 30-1481(d). Such inspections shall be carried out on at least a monthly basis during the time the flea market is in operation; provided that the inspection of merchandise maintained by flea market vendors selling recordings shall be inspected on a weekly basis. In connection with such regular inspections, flea market promoters, operators, or owners shall be authorized to inspect the records maintained by flea market vendors pursuant to section 30-1463. Should the flea market vendor fail or refuse to provide such merchandise for inspection, or should the inspection of such merchandise or any records kept regarding such merchandise indicate to the flea market promoter, operator, or owner, or their designee, that illicit recordings are being sold or offered for sale by the flea market vendor, the flea market promoter, operator, or owner, or their designee shall within 24 hours provide such information, together with information identifying the flea market vendor, to law enforcement officials, and take all such other actions as may be reasonable under the circumstances to stop such illegal activities, including the filing of a written complaint as provided in section 30-1489(e).

(b) Failure by a flea market promoter, operator, or owner or their designee to carry out the inspections required by this section; to report the failure or refusal of flea market vendors to make merchandise or any associated records available for inspection by the flea market promoter, operator, or owner or their designee; or to report the sale or offering for sale of illicit recordings to law enforcement officials within 24 hours shall be grounds for the suspension or revocation of the flea market promoter's, operator's, or owner's flea market vending permit, as provided in Section 30-1489.

(c) Each flea market promoter, operator, or owner shall, as a condition of receiving a flea market vending permit for the operation of any flea market, certify that he or she is aware of the duties imposed on flea market promoters, operators, and owners to take all actions as required by this ordinance to prevent the sale of illicit recordings by flea market vendors who are operating on the premises of the flea market promoter, operator, or owner."

**Section 14.** This Ordinance shall become effective sixty (60) days following the date of its approval by the Mayor or the date it becomes law without the Mayor's approval pursuant to City Charter Section 2-403.

**Section 15.** Should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, such a declaration shall not affect the validity of the Ordinance as a whole or any section or provision thereof other than the section or provision so declared to be invalid.



Section 16. All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

A true copy,

*Rhonda Daughin Johnson*  
Municipal Clerk, CMC

ADOPTED by the Council  
APPROVED by the Mayor

SEP 20, 2004  
SEP 28, 2004

RCS# 6041  
9/20/04  
2:47 PM

Atlanta City Council

## Regular Session

CONSENT I            CONSENT I PG(S) 1-16 EXCEPT:04-O-1442,  
                               04-R-1581, 04-O-1470  
                                        ADOPT

YEAS:	14
NAYS:	0
ABSTENTIONS:	0
NOT VOTING:	2
EXCUSED:	0
ABSENT	0

Y Smith	Y Archibong	Y Moore	Y Mitchell
Y Starnes	Y Fauver	NV Martin	Y Norwood
Y Young	Y Shook	Y Maddox	Y Willis
Y Winslow	Y Muller	Y Sheperd	NV Borders

CONSENT I



		9-20-04 Council Meeting
ITEMS ADOPTED ON CONSENT	ITEMS ADOPTED ON CONSENT	ITEMS ADVERSE ON CONSENT
1. 04-O-1500	41. 04-R-1575	62. 04-R-1608
2. 04-O-1501	42. 04-R-1576	63. 04-R-1609
3. 04-O-1502	43. 04-R-1578	64. 04-R-1610
4. 04-O-1503	44. 04-R-1579	65. 04-R-1611
5. 04-O-1504	45. 04-R-1633	66. 04-R-1612
6. 04-O-1505	46. 04-R-1653	67. 04-R-1614
7. 04-O-1631	47. 04-R-1593	68. 04-R-1615
8. 04-O-1508	48. 04-R-1594	
9. 04-O-1513	49. 04-R-1595	
10. 04-O-0165	50. 04-R-1596	
11. 04-O-1253	51. 04-R-1597	
12. 04-O-1255	52. 04-R-1598	
13. 04-O-1256	53. 04-R-1599	
14. 04-O-1259	54. 04-R-1600	
15. 04-O-1431	55. 04-R-1601	
16. 04-O-1442	56. 04-R-1602	
17. 04-O-1479	57. 04-R-1603	
18. 04-O-1480	58. 04-R-1604	
19. 04-O-1551	59. 04-R-1605	
20. 04-O-1552	60. 04-R-1606	
21. 04-O-1554	61. 04-R-1607	
22. 04-O-1625		
23. 04-O-1627		
24. 04-O-0770		
25. 04-R-1566		
26. 04-R-1568		
27. 04-R-1569		
28. 04-R-1630		
29. 04-R-1635		
30. 04-R-1650		
31. 04-R-1571		
32. 04-R-1632		
33. 04-R-1590		
34. 04-R-1616		
35. 04-R-1580		
36. 04-R-1581		
37. 04-R-1583		
38. 04-R-1584		
39. 04-R-1585		
40. 04-R-1574		

#14

04-0165

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AN ORDINANCE

BY: COUNCILMEMBER CEASAR C. MITCHELL

AN ORDINANCE TO AMEND ARTICLE XXIV OF THE CITY OF ATLANTA CODE OF ORDINANCES, RELATING TO VENDING ON PRIVATE PROPERTY; TO DEFINE CERTAIN TERMS; TO PLACE PERMITTING AND OTHER AFFIRMATIVE REQUIREMENTS ON THE PROMOTERS, OPERATORS, AND OWNERS OF FLEA MARKETS AND FLEA MARKET VENDORS FOR THE PURPOSE OF ELIMINATING THE SALE OF UNAUTHORIZED SOUND AND AUDIO VISUAL RECORDINGS AT FLEA MARKETS TO PROVIDE FOR THE FILING AND INVESTIGATION OF COMPLAINTS ALLEGING VIOLATIONS OF THIS ARTICLE TO REPEAL CONFLICTING ORDINANCES AND FOR OTHER PURPOSES.

Substitute

ADOPTED BY

- ☐ CONSENT REFER SEP 20 2004
- ☐ REGULAR REPORT REFER
- ☐ ADVERTISE & REFER
- ☐ 1st ADOPT 2nd READ & REFER
- ☒ PERSONAL PAPER REFER

COUNCIL

Date Referred: 1/20/04  
Referred To: Public Safety  
Date Referred:  
Referred To:  
Date Referred:  
Referred To:

First Reading

Committee \_\_\_\_\_  
Date \_\_\_\_\_  
Chair \_\_\_\_\_  
Referred To \_\_\_\_\_

PSLA Committee

1-27-04 Date

Chair

Action  
Fav, Adv, Hold (see rev. side)  
Other

Members

Refer To

PSLA Committee

2/19/04 Date

Chair

Action  
Fav, Adv, Hold (see rev. side)  
Other

Members

Refer To

PSLA Committee

7/27/04 Date

Chair

Action  
Fav, Adv, Hold (see rev. side)  
Other

Members

Refer To

Committee

Date

Chair

Action  
Fav, Adv, Hold (see rev. side)  
Other

Members

Refer To

FINAL COUNCIL ACTION  
☒ 2nd ☐ 1st & 2nd ☐ 3rd  
Readings  
☐ Consent ☐ V Vote ☒ RC Vote

CERTIFIED

CERTIFIED  
SEP 20 2004  
ATLANTA CITY CLERK OF COURSE  
John D. Fawcett

MAYOR'S ACTION

SEP 28 2004  
Mayor's Office

MAYOR